

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

6.584 ACRES OF LAND, MORE OR  
LESS, SITUATE IN HIDALGO  
COUNTY, STATE OF TEXAS; AND  
HEIRS OF ROMULO CAVAZOS, et al.,  
AND HEIRS OF RAUL CAVAZOS, et al.,  
*Defendants.*

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CASE NO. 7:20-CV-244

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**PLAINTIFF’S OPPOSED MOTION FOR A CONTINUANCE  
OF THE JOINT DISCOVERY/CASE MANAGEMENT PLAN  
AND THE INITIAL PRETRIAL AND SCHEDULING CONFERENCE**

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The United States of America (hereafter “United States”) respectfully moves for a continuance of the filing of an Amended Joint Discovery/Case Management Plan by February 5, 2021, and the initial pretrial and scheduling conference scheduled for February 16, 2021.<sup>1</sup>

**BACKGROUND**

The United States commenced this case on August 27, 2020, by filing a Declaration of Taking seeking to acquire a fee simple interest in property identified as Tract RGV-MCS-2119.<sup>2</sup> On September 4, 2020, the United States deposited \$347,887.00 in the registry of the Court as estimated just compensation.<sup>3</sup> Upon deposit of the estimated just compensation, title to Tract RGV-MCS-2119 vested in the United States by operation of law.<sup>4</sup>

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<sup>1</sup> Dkt. No. 51.

<sup>2</sup> Dkt. No. 2.

<sup>3</sup> Dkt. No. 10.

<sup>4</sup> Upon the filing of the Declaration of Taking and depositing the estimated compensation in the Registry of the Court, the following events occur by operation of law: “(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just

### REQUEST FOR RELIEF

The United States requests the Court continue the deadline for the filing of the Amended Joint Discovery/Case Management Plan and the initial pretrial and scheduling conference for at least sixty (60) days. The continuance sought herein will not prejudice the parties and will preserve judicial and party resources based on the following reasons:

1. This is a federal land condemnation action seeking to acquire property “to construct, install, operate, and maintain roads, fencing, vehicle barriers, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.”<sup>5</sup>

2. On January 20, 2021, President Joseph R. Biden executed a Presidential Proclamation terminating the national emergency at the southern border of the United States and directing “a careful review of all resources appropriated or redirected to construct a southern border wall” through the development of “a plan for the redirection of funds concerning the southern border wall.”<sup>6</sup>

3. The plan for the redirection of funds concerning the southern border wall is expected to be developed within 60 days from the date of the proclamation.<sup>7</sup>

4. All parties in this case have been served pursuant to Rules 4 and 71.1 of the Federal Rules of Civil Procedure.<sup>8</sup>

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compensation for the land vests in the persons entitled to the compensation.” 40 U.S.C. § 3114(b); *see E. Tennessee Nat. Gas. Co. v. Sage*, 361 F.3d 808, 825 (4th Cir. 2004) (in a Declaration of Taking Act case, “[t]itle and the right to possession vest in the government immediately upon the filing of a declaration and the requisite deposit.”).

<sup>5</sup> Dkt. No. 2, Schedule B.

<sup>6</sup> Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

<sup>7</sup> *Id.*

<sup>8</sup> *See* Dkt. Nos. 45, 46; There is a pending Motion to Substitute Parties for and in place of Efrain G. Cavazos, deceased (Dkt. No. 53); if granted, the United States will continue service of process on the substituted parties and file an appropriate Amendment to Schedule G.

5. Construction has not yet begun on Tract RGV-MCS-2119; however, construction has started on land nearby and adjacent to Tract RGV-MCS-2119.

6. On December 21, 2020, the United States filed an Opposed Motion for Order of Immediate Possession<sup>9</sup>; however, the plan for redirecting funding and repurposing contracts due in the next 60 days may impact the necessity of possession.<sup>10</sup> If possession is no longer necessary once the aforementioned plan is developed, the United States will withdraw its pending motion for possession.

7. Additionally, there is a Motion for Leave to Intervene as Defendant by Proposed Defendant Intervenor Jose Alfredo Cavazos<sup>11</sup> and a Motion for More Definite Statement by Defendant Eloisa Rosa Cavazos and Proposed Defendant Intervenor Jose Alfredo Cavazos<sup>12</sup> pending before the Court.

Based on the foregoing, the United States requests the Court grant this motion and enter an order continuing the filing of the Amended Joint Discovery/Case Management Plan and the initial pretrial and scheduling conference for at least 60 days.

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<sup>9</sup> Dkt. No. 47.

<sup>10</sup> Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021) at Sec. 2.

<sup>11</sup> Dkt. No. 21.

<sup>12</sup> Dkt. No. 22.

**CERTIFICATE OF CONFERENCE**

On January 25, 2020, undersigned counsel conferred with all *pro se* parties and the Hidalgo County Tax Assessor-Collector by letter requesting their position on the instant motion. On January 28, 2021, Plaintiff conferred with Aurora A. Garcia who is unopposed; Delia A. Mendoza who said she does not have a position; and Norma A. Anzaldua who said she was opposed to the wall and therefore opposed to a continuance. Defendants Maria Elena Ovalle, Rebecca Serrano, Betty Anzaldua, Jorge Flores, Robert E. Flores, Jr., Joseph Flores, Dora Flores, Natalie Flores-Henley, Elvira Flores Deanda, Jose C. Anzaldua, Jr., Ronald R. Anzaldua, Yolanda Martinez, Emma Catherine Flores, Imelda Flores Gonzalez, Ernesto Flores, Jr., Patrick Anzaldua, Victoria M. Flores, and the Hidalgo County Tax Assessor-Collector have not responded to our request for contact making their position at the time of filing unknown.

On January 25, 2021, undersigned counsel conferred via email with Janette Cavazos as Power of Attorney on behalf of Defendants: Efrain G. Cavazos<sup>13</sup>, Humberto Cavazos, Rogerio Cavazos, Jr., Maria Rosario Cavazos, Bertha Oralia Cavazos, Ruben Cavazos, Gloria Dalia Guerra, Pablo Servando Guerra, Juan Lino Guerra, Gloria Diana Saucedo, Jaime Cavazos, Michelle Alejandro, Angie Marin, Keila Cavazos, Ariana Pitalua, Rebecca Hernandez, Paula Gonzalez, and Melissa Salazar, and she is unopposed to this Motion.

On January 28, 2021, undersigned counsel conferred with opposing counsel on behalf of Defendant Eloisa Rosa Cavazos and Proposed Defendant-Intervenor Jose Alfredo “Fred” Cavazos, and he is unopposed to this Motion.

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<sup>13</sup> Efrain G. Cavazos died on October 18, 2020. The United States has a pending motion to substitute his two daughters: Melinda Cavazos and Maribel Cavazos (Dkt. No. 53). Janette Cavazos is also power of attorney for Melinda Cavazos and Maribel Cavazos.

Respectfully submitted,

**RYAN K. PATRICK**

United States Attorney  
Southern District of Texas

United States Attorney  
By: *s/ Megan Eyes*  
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Attorney in Charge for Plaintiff

**CERTIFICATE OF SERVICE**

I, Megan Eyes, Assistant United States Attorney for the Southern District of Texas, hereby certify that on this 1st day of February 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

*s/ Megan Eyes*  
**MEGAN EYES**  
Assistant United States Attorney